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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 MICHELLE A.,

7 Plaintiff,

8 v.

9 COMMISSIONER OF SOCIAL
10 SECURITY,

11 Defendant.

CASE NO. C19-5592 BHS

ORDER AFFIRMING DENIAL OF
BENEFITS

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I. BASIC DATA

Type of Benefits Sought:

() Disability Insurance

(X) Supplemental Security Income

Plaintiff's:

Sex: Female

Age: 41 on the application date.

Principal Disabilities Alleged by Plaintiff: Bipolar disorder, anxiety, scoliosis, arthritis.
Admin. Record ("AR") at 147–48.

Disability Allegedly Began: January 1, 2005¹

Principal Previous Work Experience: None

¹ Plaintiff had a prior application that was denied on November 6, 2013. *See* AR at 143–45. The ALJ considered the denial of benefits prior to this date final and binding. *See* AR at 24.

1 Education Level Achieved by Plaintiff: GED

2 **II. PROCEDURAL HISTORY—ADMINISTRATIVE**

3 Before Administrative Law Judge (“ALJ”) Allen Erickson:

4 Date of Hearing: May 3, 2018

5 Date of Decision: June 27, 2018

6 Appears in Record at: AR at 24–38

7 Summary of Decision:

8 The claimant has not engaged in substantial gainful activity since
9 July 29, 2016, the application date. *See* 20 C.F.R. §§ 416.971–76.

10 The claimant has the following severe impairments: Left knee
11 degenerative joint disease, obesity, and bipolar disorder. *See* 20 C.F.R. §
12 416.920(c).

13 The claimant does not have an impairment or combination of
14 impairments that meets or medically equals the severity of one of the listed
15 impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R.
16 §§ 416.920(d), 416.925, 416.926.

17 The claimant has the residual functional capacity (“RFC”) to
18 perform sedentary work as defined in 20 C.F.R. § 416.967(a), with
19 exceptions. She cannot climb ladders, ropes, or scaffolds. She can
20 occasionally climb ramps and stairs, and occasionally engage in postural
21 activities. She can occasionally use foot controls bilaterally. She can
22 frequently handle/finger with the dominant right hand. She can have
occasional exposure to vibration, and extreme cold temperatures. She can
understand, remember, and apply short, simple instructions. She can
perform routine tasks. She cannot work in a fast-paced, production-type
work environment. She can make simple decisions. She can occasionally
interact with the general public and coworkers.

The claimant has no past relevant work. *See* 20 C.F.R. § 416.965.

The claimant was a younger individual (age 18–49) on the date the
application was filed. *See* 20 C.F.R. § 416.963.

1 The claimant has at least a high school education and is able to
2 communicate in English. *See* 20 C.F.R. § 416.964.

3 Transferability of job skills is not an issue because the claimant does
4 not have past relevant work. *See* 20 C.F.R. § 416.968.

5 Considering the claimant's age, education, work experience, and
6 RFC, there are jobs that exist in significant numbers in the national
7 economy that the claimant can perform. *See* 20 C.F.R. §§ 416.969,
8 416.969(a).

9 Before Appeals Council:

10 Date of Decision: May 10, 2019

11 Appears in Record at: AR at 1–3

12 Summary of Decision: Denied review.

13 **III. PROCEDURAL HISTORY—THIS COURT**

14 Jurisdiction based upon: 42 U.S.C. § 405(g)

15 Brief on Merits Submitted by (X) Plaintiff (X) Commissioner

16 **IV. STANDARD OF REVIEW**

17 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's
18 denial of Social Security benefits when the ALJ's findings are based on legal error or not
19 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
20 1211, 1214 n.1 (9th Cir. 2005). "Substantial evidence" is more than a scintilla, less than
21 a preponderance, and is such relevant evidence as a reasonable mind might accept as
22 adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);
Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for
determining credibility, resolving conflicts in medical testimony, and resolving any other

1 ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

2 While the Court is required to examine the record as a whole, it may neither reweigh the
3 evidence nor substitute its judgment for that of the ALJ. *See Thomas v. Barnhart*, 278
4 F.3d 947, 954 (9th Cir. 2002). “Where the evidence is susceptible to more than one
5 rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion
6 must be upheld.” *Id.*

7 **V. EVALUATING DISABILITY**

8 Plaintiff bears the burden of proving she is disabled within the meaning of the
9 Social Security Act (“Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The
10 Act defines disability as the “inability to engage in any substantial gainful activity” due to
11 a physical or mental impairment which has lasted, or is expected to last, for a continuous
12 period of not less than twelve months. 42 U.S.C. § 1382c(3)(A). A claimant is disabled
13 under the Act only if her impairments are of such severity that she is unable to do her
14 previous work, and cannot, considering her age, education, and work experience, engage
15 in any other substantial gainful activity existing in the national economy. 42 U.S.C. §
16 1382c(3)(B); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098–99 (9th Cir. 1999).

17 The Commissioner has established a five-step sequential evaluation process for
18 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R.
19 § 416.920. The claimant bears the burden of proof during steps one through four.
20 *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). At step
21 five, the burden shifts to the Commissioner. *Id.*

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VII. DISCUSSION

Plaintiff has failed to show harmful error. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407–09 (2009)) (holding that the party challenging an administrative decision bears the burden of proving harmful error). The ALJ reasonably interpreted the evidence in noting that Plaintiff’s hands were healing well after she fell and injured them in November 2017. *See* AR at 27. Two weeks after the injury, Plaintiff’s hands were “healing well.” AR at 558. A little over a month after the injury, Plaintiff’s provider noted that Plaintiff’s hands “look[ed] great.”

1 AR at 552. Plaintiff had full range of motion in both hands. AR at 553. X-rays of
2 Plaintiff's hands from November 3, 2017, and January 5, 2018, showed no injuries from
3 Plaintiff's fall. *See* AR 602, 604. Although there was some evidence that swelling
4 persisted in Plaintiff's right hand, the ALJ reasonably noted that Plaintiff did not seek
5 follow-up care from a specialist. *See* AR at 27. In fact, Plaintiff saw an orthopedic
6 surgeon in January and March 2018 for her left knee condition, and the only mention of
7 her hands was that they were healing from the November 2017 injury. *See* AR at 683–
8 96.

9 Furthermore, errors at step two generally cannot be considered harmful as long as
10 the ALJ finds that the claimant has at least one severe impairment, and still addresses
11 non-severe impairments when considering the claimant's RFC. *See Buck*, 869 F.3d at
12 1049 (citing *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)). The step-two
13 inquiry "is not meant to identify the impairments that should be taken into account when
14 determining the RFC." *Buck*, 869 F.3d at 1048–49. At the RFC phase, the ALJ must
15 consider the claimant's limitations from all impairments, including those that are not
16 severe. *Id.* at 1049. "The RFC therefore should be exactly the same regardless of
17 whether certain impairments are considered 'severe' or not." *Id.* (emphasis omitted).

18 Here, the ALJ considered the evidence relevant to Plaintiff's right hand injury in
19 formulating the RFC, including Plaintiff's testimony, and the opinion of Anna LaPorte,
20 D.O. *See* AR at 34, 36. Because the ALJ considered that evidence at the RFC phase, and
21 Plaintiff has not challenged the ALJ's consideration of that evidence, *see* Pl. Op. Br. at 1–
22 4, Plaintiff has failed to show harmful error.

1 **VIII. ORDER**

2 Therefore, it is hereby ORDERED that the Commissioner's final decision denying
3 Plaintiff disability benefits is AFFIRMED and this case is DISMISSED with prejudice.

4 Dated this 10th day of February, 2020.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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